

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JERRY L. PATTON,)	
)	
Plaintiff,)	
)	
v.)	NO. 3:12-0338
)	Judge Trauger/Bryant
DR. (F/N/U) LOGAN, et al.,)	
)	
Defendants.)	

TO: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

On October 24, 2012, defendants filed the suggestion of death of plaintiff Jerry L. Patton, a/k/a James Johnson (Docket Entry No. 46). According to this filing, plaintiff Patton died on August 13, 2012, while incarcerated at the Northwest Correctional Center in Tiptonville, Tennessee.

Upon receiving this notice, the undersigned entered an order, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, stating that if no motion to substitute a party plaintiff were filed in this case by January 28, 2013, this case would be subject to dismissal (Docket Entry No. 47).

It appears that no motion for substitution for the plaintiff has been filed.

Rule 25(a)(1) of the Federal Rules of Civil Procedure provides as follows:

Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after

service of a statement noting the death, the action by or against the decedent must be dismissed.

In the absence of a motion to substitute a new plaintiff in the place of plaintiff Patton, the undersigned Magistrate Judge finds that, pursuant to the foregoing rule, the complaint must be dismissed.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge RECOMMENDS that the complaint in this action be DISMISSED for failure to substitute a party plaintiff within the time provided by Rule 25(a)(1).

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 4th day of February 2013.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge

